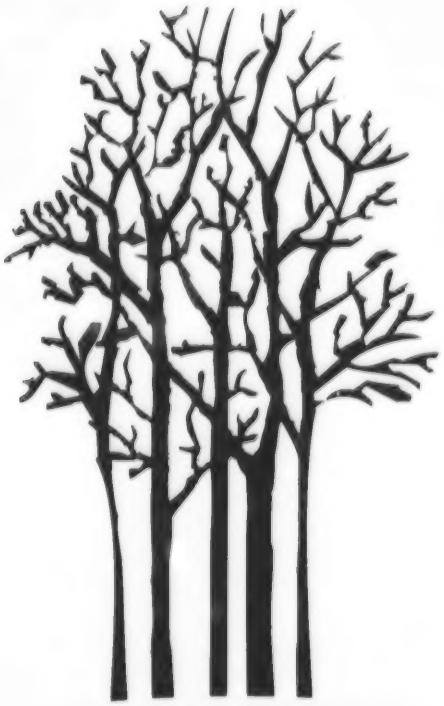
Water Use & Allocation

1999 PUBLIC CONSULTATION



Summary and Conclusions

Manitoba Conservation

100-03891/

Manitoba
Conservation

Water Resources Branch
Box 14, 200 Saulteaux Crescent
Winnipeg MB R3J 3W3
Telephone (204) 945-7488
Fax: (204) 945-7419

January 31, 2000

To: Open House Participants

The following is a report on six Water Use and Allocation Workshops held across the province in March and April, 1999 as well as the meetings with stakeholders and written submissions. Your participation in the open house process was very much appreciated and we are looking forward to your continued interest and participation as the program review progresses. The process is open and suggestions and comments will continue to be accepted.

If you have any questions or comments on the enclosed material or on the review process please contact Darwin Donachuk coordinator of the review, at (204) 945-2354 or myself at (204) 945-7488.

Once again, thank you for your time and assistance.

Yours truly,

Steven D. Topping, P. Eng.
Chair
Water Use and Allocation Task Force

Water Use and Allocation Task Force

Steve Topping - chair - Manitoba Conservation; Director, Water Resources Branch

Darwin Donachuk - Coordinator - Manitoba Conservation; Water Resources Branch

Lorne Boguski - Association of Manitoba Municipalities

Earl Malyon - Association of Manitoba Municipalities

Dick Menon - Manitoba Intergovernmental Affairs

Ken McGill - Manitoba Agriculture and Food

Bruce Webb - Manitoba Conservation - Environmental Division

Paul McDonald/Doug Smallwood - Association of Irrigators of Manitoba

Larry Whitney - Manitoba Conservation; Water Resources Branch

Ray Bodnaruk - Manitoba Conservation; Water Resources Branch

Jim Petsnik/Henry Dyck - Manitoba Conservation; Policy Coordination Branch

Lori Thompson - Manitoba Conservation; Fisheries Branch

Lawrence Dyck - Keystone Agricultural Producers

Report Contents

A. Introduction ..... *I*

B. Summary ..... *II*

C. What We Heard and Conclusions

Administration of *The Water Rights Act*

1) Licensing 1
2) Monitoring and enforcement 3
3) Fees 4

Additions to *The Water Rights Act*

1) Instream flows, ecosystem needs, aesthetics 5
2) Watershed planning 6
3) Interbasin transfers and water export 8
4) Water quality/quantity integration 9
5) Priorities of use 10
6) Transfer of licenses 11

Fundamental Changes to *The Water Rights Act*

1) First in time first in right vs priorities of use 12
2) Public vs private ownership 13

Water Supply and Management

1) Water storage 14
2) Groundwater recharge 15
3) First Nations interests 16
4) Water quality 17
5) Other 18
6) Drainage 20

Appendix 1 Individual Workshops

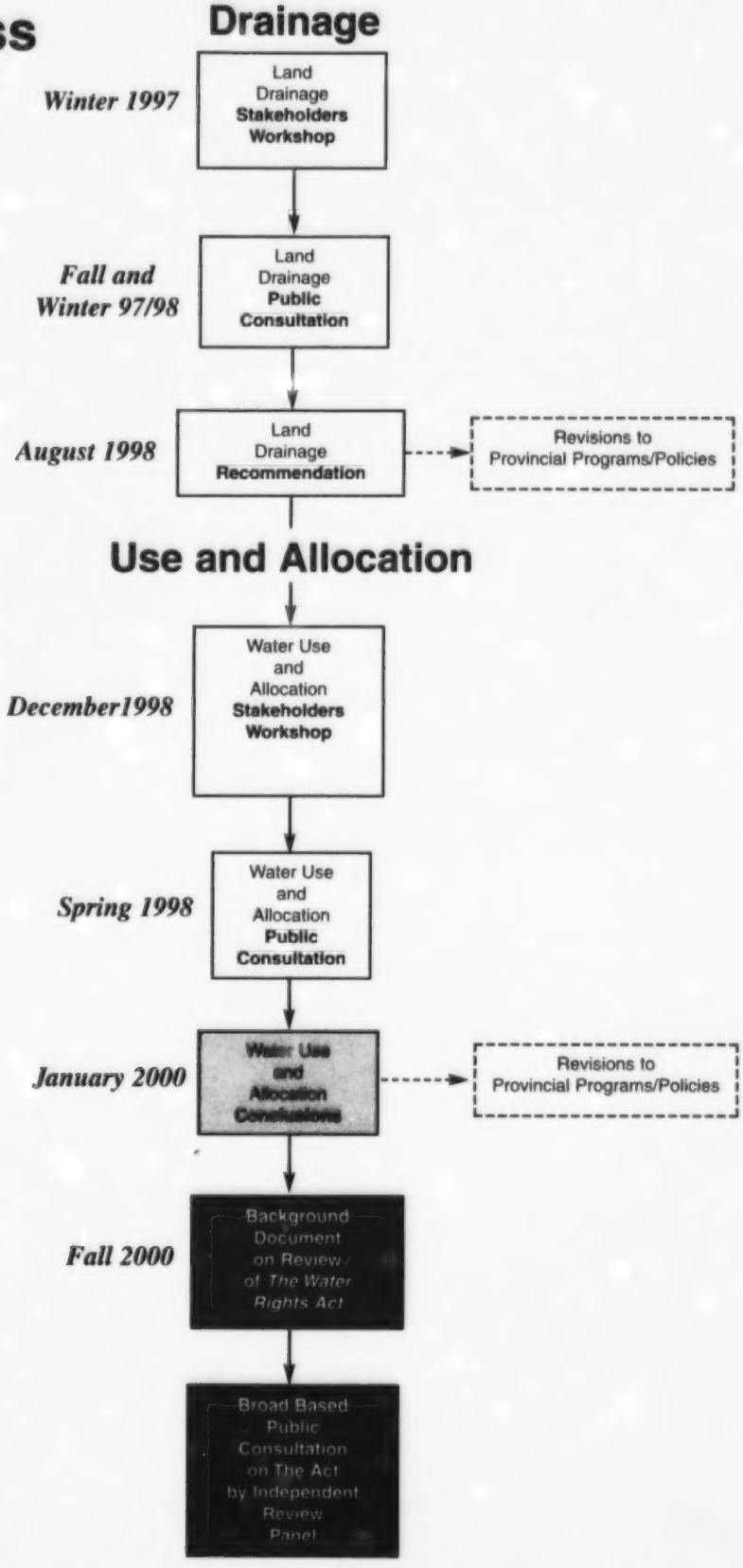
Portage la Prairie 22
Roblin 24
Souris 26
Steinbach 29
The Pas 32
Winnipeg 34

Appendix 2 Submissions 37

Association of Irrigators of Manitoba 38
Alice Chambers Letter 43
Assiniboine River Management Advisory Board 47

Appendix 3 Water Use Licensing Background Document 51

Review Process



A Introduction

The purpose of this report is to provide information as to what stakeholders and Manitobans feel are the major water use and allocation issues and options. The report:

- presents each of the major issues identified
- provides an overview of what the Task Force heard
- provides background on the issues
- includes detailed comments by workshop participants
- includes conclusions of the Task Force.

Appendix 1 contains the detailed comments on an individual meeting basis. Appendix 2 contains the written submissions the Task Force received. Appendix 3 contains the background information on *The Water Rights Act.*

The Water Rights Act is administered by the Water Resources Branch, Manitoba Conservation. *The Water Rights Act*, states that all property in and rights to the use or diversion of water are vested in the province, and provides a process for applying for and issuing of a water rights licence.

On average, Manitoba has an abundant supply of surface water. However, less than 5% of the surface water draining into the province passes through agro-Manitoba where most of the water demand is. In addition, flows may vary greatly from year to year, most of this occurring during spring runoff.

Large quantities of groundwater lie beneath much of southern Manitoba. Groundwater is the primary water supply for about a quarter of Manitobans and plays a critical role in replenishing streamflow and providing water supplies to lakes and wetlands. Only the major aquifers are capable of producing water at a sufficient rate to support high demand activities.

The Water Use and Allocation Task Force comprises representatives from the Association of Manitoba Municipalities, Keystone Agricultural Producers, Association of Irrigators of Manitoba, Manitoba Conservation, Intergovernmental Affairs, and Manitoba Agriculture and Food. In March and April, six public workshops were held across Manitoba. As well, meetings were held with stakeholder organizations to identify water use and allocation issues and options.

Results of the Use and Allocation review are documented in this report. These results, as well as the results from the drainage review will contribute in the preparation of a discussion paper on options for revisions to *The Water Rights Act*. There will be further opportunity for public input and comments on these options during public review of the discussion paper. The Task Force conclusions are based on the public workshops, stakeholders meetings, written and verbal submissions following considerable discussion by the Task Force. They will be considered in developing and amending the use and allocations policies and programs of all provincial agencies.

B

Summary of Public Input on *The Water Rights Act*

Most of the input was focussed on *The Water Rights Act*. The following chart attempts to reflect the general level of support for various issues surrounding the Act. There was strong support for exercising all of the provisions of the existing Act. There was also support for updating the Act to address the environment, water quality, watershed planning, interbasin transfers, and water export. The fundamental principles of first in time, first in right, allocation based on priorities of use, and Crown ownership of water were all supported.

ISSUE	General Level of Support at Workshops and Meetings				
	Disagree With	Support With Conditions	Support	Strongly Support With Conditions	Strongly Support
Administration of The Water Rights Act					
Address Licensing Backlog					X
Monitor/Collect Records			X		
Increase Enforcement			X		
Implement User Fees				X	
Additions to The Water Rights Act					
Address Instream Flow Requirements, Aesthetics, Ecosystem Needs			X		
Implement Watershed Planning					X
Allow Interbasin Transfer	X				
Allow Water Export	X				
Integrate Quantity/Quality			X		
Maintain Current Ranking of Priorities		X			
Amend Licence Transfer System	X				
Fundamental Changes to The Water Rights Act					
Maintain First in Time First in Right				X	
Allocation Based on Priorities of Use				X	
Retain Crown Ownership					X

B

Summary of Public Input on Water Supply and Management Issues

Water Storage

There was very strong support for further investigation of water storage in watersheds where shortages are occurring or are imminent. As well, there was support for providing incentives or the removal of disincentives to encourage the re-establishment or retention of natural storage as a means of reducing the rate at which water moves off the landscape.

Groundwater Recharge

Initiatives to maintain or enhance groundwater recharge were recommended.

First Nations Interests

First Nations interests were identified as something that is not currently addressed by provincial legislation or policy.

Water Quality

The need to protect water quality was frequently cited. Groundwater quality is a particular concern, since groundwater is often used, without treatment, for human or livestock consumption. The most prominent concerns were the impact of livestock operations on water quality and the need to better integrate quantity and quality in allocation.

Issues Related to the Land Drainage Review

Most of the comments pertaining to drainage were similar to those heard during the drainage review. The Land Drainage Task Force recommendations of August, 1998 address these issues. However a number of comments noted the potential impacts of drainage on water availability for consumptive and non-consumptive uses.

B Summary of Conclusions on *The Water Right Act*

Administration of the Act

Licensing

- first priority is to clean up the backlog of applications
- free up unused allocations
- use watershed and aquifer plans in allocation strategies and licensing decisions

Monitoring and Enforcement

- monitor and record water uses for allocation, planning and management
- make the information accessible
- review non compliance penalties and processes
- enforcement required for unauthorized water use and failure to report use

Fees

- a strategy to address water pricing should be developed
- direct revenues to water management

Additions to the Act

Instream Flows, Ecosystem Needs, Aesthetics

- instream flow needs should be addressed in the Act
- groundwater reservations required for aquifers supporting base flows
- establishing and protecting instream flow needs as an immediate priority for sources approaching full allocation

Watershed Planning

- local input key
- watershed plan to guide allocation
- watershed planning recognized in the Act
- highest priority for watersheds approaching full allocation
- institutional arrangements for water management on a watershed basis

Interbasin Transfers and Water Export

- interbasin transfers prohibited by Act
- conditions for intrabasin transfers spelled out in the Act
- export of large quantities not permitted

Water Quality/Quantity Integration

- allocation to consider both quantity and quality
- watershed plans to be primary means of integrating quantity and quality

Priorities of Use

- general agreement on existing priorities
- need to clarify how priorities are factored into allocation decisions

Transfer of Licences

- retain current provisions for transferring licences

Fundamental Changes to the Act

First in time first in right vs priorities of use

- the Act must be clear on the relationship between the use priorities and the first in time first in right principle

Public vs Private Ownership

- Crown should retain ownership of water

B Summary of Conclusions

Water Supply and Management

Water Storage

- undertake a water retention strategy
- protect and enhance natural retention areas

Groundwater Recharge

- maintain and enhance aquifer recharge

First Nations interests

- address First Nations involvement

Water Quality

- review regulations as to impact on protec[illegible] water quality
- address through watershed/aquifer plans

Other

- stakeholder, public involvement essential component in water management

Drainage

- deal with drainage, use and allocation jointly in watershed planning process

C What We Heard and Conclusions

Overview of what we heard

The most direct and consistent response was that the Water Resources Branch should immediately address the backlog of licence applications. Some participants suggested that there is no need for a new act and that the existing Act should be effectively administered.

Background

Currently there are approximately 850 valid licences, 850 expired licences, and 800 applicants requiring attention.

Detailed Comments

- Use it or lose it - should be retained/strengthened in the Act
- Concerned about over allocation of water
- Expired licences less problem than new applications - It should be easier to process renewals since the water is already allocated
- Unused licensed water (when do you lose what you're not using?)
- More staff but decentralize decision-making to the regions
- Lack of staff resources to enforce/deliver services/regulate/licensing - stop the cutbacks
- Hutterite colonies should fall under two classes of use, domestic for homes and agriculture for their farms
- When new licences are approved for large barns the existing wells in the area should be guaranteed water. (Adequate water supply should be approved before the barn is started) - what does this mean?
- Mothballed mines and other facilities tie up supplies - use it or lose it?
- Water Rights Licence applications should be reviewed by DFO to check for Federal Fisheries Act requirements? - no net loss policy is difficult to administer
- Should make better estimates of domestic use
- Allocation is most critical in drought years. Match lowest supply and maximum use
- Increasing allocation beyond firm supply increases risk of shortage
- More staff/resources needed for all aspects of water management
- Look at effects on aquifer and adjacent wells
- License to sustainable yield of aquifer
- Impacts on adjacent wells must be addressed by license
- Need to cleanup backlog
- Licensing backlog and enforcement could be addressed by putting response deadlines in the Act or Regulations
- Backlog caused by previous neglect, small staff dealing with use and drainage, increased demand (irrigation) care in allocation as limits reached, high number of renewals
- Licensing backlog - increasing complexity (staffing, resources, local involvement i.e. municipal)
- Licensing backlog - interim licences? Producers need security to get loans
- Extra staff to get handle on licensing backlog , use retired personnel, or hire university students
- Licensing backlog - some applications could be fast tracked?
- Focus on projects with large consumption/risks/unknowns
- No licence for uses which do not require licenses (remove frivolous applications license backlog)
- License backlog apply local knowledge into licensing and procedures - more staff to handle backlog - responsibility of the Act to remain at provincial level - enforcement (staffing) - simplify the Act to make it understandable and manageable

CONCLUSIONS

1. *The backlog of applications for water rights licences should be addressed as soon as possible through: the use of additional staff resources over a three or four year period; support from other agencies, along with administrative and policy changes as required to clarify and streamline the licensing process,*

2. *Unused allocated water should be freed up for other users.*
   (Water allocated for undeveloped projects should be re-allocated for new projects).

3. *Watershed and aquifer management plans must be developed to guide water allocation decisions.*

Overview of what we heard

Improvements to monitoring water use, water use data collection, metering, and record keeping were key requirements identified as action items. Agreement was not reached on collection methods or on how the data could best be used in water management decision-making.

Background

Under The Act, the Minister may require the submission of water use records. Current licences for groundwater stipulate the requirement for a flow measuring device. All users are required to submit water use records. Water use data is necessary for allocation , planning and management. Enforcement of this requirement is limited, as is enforcement of other forms of non-compliance. The lack of enforcement becomes most problematic in periods of water shortage.

Detailed Comments

- Water use data and monitoring - require reporting
- Record keeping - water use
- Monitoring for irrigation use? All licensed users to submit use information including irrigation - to be phased for existing users (2-4 years)
- Metering & monitoring - reporting of water use, enforcement issues, actual use vs licensed use
- Policing of licences
- Enforcement of licences - water use and drainage - more staff/effort required
- Enforcement - Unauthorized works, monitoring/metering
- Enforcement of orders - better enforcement needed, more teeth
- Use it or lose it - license holders should not tie up water
- Enforcement of the Act
- Private wells should be monitored and metered
- Improved quality monitoring
- Fines under the Act - for non-licensed users - not enforced - should have higher minimum fines
- Water use records - should be kept and compiled (crop insurance requires water use records, however, accuracy may be an issue, annual and long term)
- "Use it or lose it" is anti-conservation - should encourage irrigation methods which do not waste water

CONCLUSIONS

1. *Monitoring and recording of all water uses is necessary for allocation, planning and water management recognizing that domestic use will be difficult to monitor.*

2. *Enforcement provisions and penalties for non-compliance should be reviewed.*

Overview of what we heard

As provided for in the Act, water use charges were generally supported. However, in most cases this support was conditional on the fees collected being used for water management (eg. licensing, monitoring, enforcement, supply, planning). There was also concern that water should not be a commodity subject to trade rules. Most of the discussion suggested that pricing must be "fair".

Background

Fees are used for two purposes, to prevent overuse and for cost recovery. A Water Rights Act Regulation establishes licence fees. Annual fee rates, based on volume, are specified for industrial or other purposes. Fees are only charged to new industrial users whose licenses have been renewed since 1988.

Detailed Comments

- Charge for water OK (protect rights)
- Ear mark licence fees for water management purposes
- Equitable water pricing
- First in time, first in right (compensation when shortages are experienced)
- Nominal fee for water use - use fees for better management, monitoring and research
- Water use charges - cover management costs and monitoring costs
- Water fees should be charged on non-domestic usage and used in a separate water fund - charge all licenses (present and future)
- Water use charges should be different for different sources - recognize extra expense of developing off-stream storage by charging lower rates for water from these sources
- User fees - provides funds for enhancing quality groundwater
- Users fees - users who own infrastructure are already paying for well, pump, etc. - water use reporting more important than user fees in promoting water conservation
- Control over water use - should have increasing cost with increasing demand to promote water conservation. Need uniform policy across province - one municipality cannot do alone. Municipal charges are for infrastructure only - operating and capital replacement, coming pressure on municipalities to comply with sustainable development, principles, P.U.B. approves fee structures
- Water use fees - apply to all users (including domestic?). Must have equitable way of charging, but could have different fees for different purposes. Must be worth collecting?
- Domestic water use not subject to water pricing
- If water was a commodity, NAFTA involvement would depend on pricing structure - make sure NAFTA is not involved
- Water charges to promote water conservation for irrigation
- Could require best management practices for irrigation (and revoke licence if not followed). Should not rely on economics of application to minimize application of water for irrigation

CONCLUSIONS

1. *Cost recovery for water use should be implemented for all users based on a "fair" equation. A strategy to address water pricing involving all stakeholders should be developed immediately.*

2. *Revenue from water use fees should be used to fund water management programs. (However under The Financial Administration Act, public money must be deposited in a consolidated fund).*

Overview of what was heard

It was agreed that the Act should address instream flow needs, ecosystem needs and aesthetics.

Background

The Act does not specifically address instream flow needs such as fish and ecosystem requirements. Currently a clause which provides for the protection of instream flow needs and seniority rights is included on each licence.

Alternatively the Minister may reserve a portion of the water for priority uses which could include instream flows and aquifers Typical reservations would reflect management plans.

Detailed Comments

- Instream flows - not covered in the Act. What are they? Domestic/aquatic uses - "health of environment", covered in licensing through reservations
- Instream flow needs must to be maintained (more important where water is regulated for use or recreation)
- Look at Instream Flow Needs (IFN) for surface sources (required by Sustainable Development Policies, not the Act
- Monitoring programs should include ecological criteria and ecological/biological indicators, not just physical parameters such as turbidity - must verify that ecosystems are being sustained

CONCLUSIONS

1. *The Act should make provision for instream flow needs in the allocation of surface water supplies.*

2. *Reservations of groundwater supplies should be provided for aquifers which provide base flow for surface water sources.*

3. *For water sources that are approaching full allocation, the establishment and protection of instream flow needs should be an immediate priority.*

Overview of what we heard

Watershed and aquifer planning was supported without exception as a way of providing for local involvement, integrating water quality and quantity, and integrating resource management on a watershed and aquifer basis.

Background

Presently the Act does not provide for the allocation of water according to management plans. However, the Provincial Water Policies state, "water management priorities shall be determined through a basin planning process that takes into account the protection of potable water supplies, environmental integrity, existing commitments and economic requirements."

Currently, management planning has been undertaken with stakeholder involvement and public consultation for the Winkler Aquifer, the Oak Lake Aquifer, and the Assiniboine Delta Aquifer. The resulting management plans address allocation limits, aquifer enhancement, aquifer protection, aquifer monitoring, education, and priorities of use.

The Dauphin Lake Basin Advisory Board focused on water quality and slowing down runoff. The Assiniboine River Management Advisory Board has focussed on the operation of the Shellmouth Reservoir and the Assiniboine Delta Aquifer. It is also currently addressing requirements for a healthy river.

Detailed Comments

- Watershed planning should be used
- Comprehensive plan for Assiniboine River is needed
- Licences should be based on watershed plan
- Reservations in each river reach for future development - irrigation, industrial or? (Local input into allocations from reserves) Solution: Watershed plans with regular reviews - 10 years
- Watershed planning - combine drainage and allocation
- Need local watershed planning group
- Plan today for 20-50 years ahead (population growth, livestock growth)
- Deal with water issues on a watershed basis
- Watershed districts planning. Should use local input and promote water retention
- Promote watershed planning
- Recommend watershed based planning
- Watershed management - setting limits for resource use/harvesting - need to consider development options and impacts - compensation for lost opportunities to benefit other resources? Eg. retaining forest land , not draining
- Watershed planning should include cumulative impacts i.e. intensive livestock operations.
- Concerned about incremental development/diversion - prefer small scale developments
- Need conservation district on watershed boundaries
- More emphasis on watershed planning
- Roles of local government vs. provincial government in water management must be clear
- Conservation districts should represent watershed
- Power of local water groups - set priorities
- More of a say at the local level
- Explore concept of regional water supply management - local control of aquifers
- How to allocate water. Province should retain control - concern about politics of allocation - will small users (RM's/business/individuals) be squeezed out?
- Conservation Districts are the ideal organizations to do local planning. It is important to the province to have local input

CONCLUSIONS

1. *Local input is a key element to any future allocation planning/decision-making process.*

2. *Water should be managed and allocated on a watershed and aquifer basis under the framework of a watershed and/or aquifer plan.*

3. *Watershed Planning should be required by the Act. Plans for watersheds and aquifers approaching full allocation should be the highest priority.*

4. *Institutional arrangements for water management on a watershed basis should be developed.*

Overview of what we heard

Consistent with the water policies the response was "no interbasin transfers." The response to water export was "no" or only after local needs are met.

Background

Water export is not addressed in the Act. The water policies oppose interbasin transfers (transfers in or out of the Hudson Bay Basin). Intrabasin transfer (transfers within the Hudson Bay Basin) must consider impacts on donor and receiving sub-basins. Within the Assiniboine River sub-basin transfers exist from the Assiniboine to the LaSalle River and the Portage Diversion, and other diversions from the Assiniboine River have been proposed.

Detailed Comments

- Water export - know long term impact before approving, allow only if a surplus available
- Water export must be co-ordinated with other jurisdictions. Bulk water should not be for export. Also interbasin transfers are opposed
- Water export - only after local need is met
- Export of water GATT Ruling Canada vs. USA. Fees based on ruling
- The federal government cannot dictate on the export of water as it is a provincial resource
- Protection from water diversion and export should be strengthened
- New legislation should ban export of water

CONCLUSIONS

1. *Interbasin transfer (transfers in or out of the Hudson Bay Basin) of water should be prohibited by the Act.*

2. *Intrabasin transfers (transfers within the Hudson Bay Basin) should be minimized and conditions under which such transfers can occur should be specified in the Act.*

Overview of what we heard

There was strong support for considering both water quality and quantity in water allocation. However, there was no consensus on how to accomplish it.

Background

Water quality is not addressed in the Act although water use is dependent on water quality. Water rights licensing and Environment Act licensing processes are coordinated for projects that require both licences.

Detailed Comments

- Water quality should be recognized in allocation and use
- Water quality - effects of the Maple Leaf Plant on water allocation should be considered - need to protect our water
- Use and allocation needs linked to quality? (if it's polluted...it's done)
- Combine water quality and quantity management in one department
- Specifications for measuring water quality - ecosystems standards rather than chemical parameters
- Legislation changes to solidify relationship between water quality and quantity - not looking at combining acts, but continuing co-ordination

CONCLUSIONS

1. *Water allocation should consider both use allocation and allocation for assimilative capacity.*

2. *The best potential for integrating quality and quantity is through watershed/aquifer plans.*

Overview of what we heard

Generally, the priorities as contained in the Act were accepted. However, some discussion took place on whether instream flow needs and ecosystem needs should be dealt with as a priority through cutoffs or reservations. There was acknowledgement that there are limited circumstances for implementing the water use priorities in the administration of the Act. Considerable discussion took place on the definition of these use categories eg; the treatment of individual residential users in municipalities as domestic, which are exempt from licensing, and urban residential users as municipal, which require licensing, was of concern to communities located in municipalities where this is occurring.

Background

The order of priority for which water may be used or diverted, in descending order, is as follows:

Domestic purposes
Municipal purposes
Agricultural purposes
Industrial purposes
Irrigation purposes
Other purposes

In a fully allocated situation, a new licence could be issued by displacing a licence for a lower priority use (subject to compensation). Water may also be reserved from a source for future high priority uses.

Detailed comments

- Priorities - recreation vs. food production?
- Water rights priorities - conservation should be higher
- Develop priority principles to be used as allocation limits are approached
- Development - urban subdivisions license priorities
- Review Domestic vs Agriculture water use definition
- Create a level playing field - R.M.'s vs Towns on allocation of water - towns are regulated (municipal/use) - no regulation of R.M. use (domestic use if individual works supplies)
- Should IFN be top priority in drought? Currently protected through reservations

CONCLUSIONS

1. *There was general agreement on the existing priorities.*

2. *There is a need to clarify how water use priorities can be factored into water allocation licensing decisions.*

Overview of what we heard

The current provisions for transferring licences should be retained.

Background

Licences are issued to the water user who must have legal access to all lands required for the project. When the licensee loses interest in the land the licence automatically expires; however, the new landowner may apply for a transfer of the licence. The transferred licence retains its original precedence as well as other conditions.

A licence for water use may be issued for up to 20 years.

Detailed Comments

- The current provision for transferring licences should be retained
- Transfer of licences - should be automatic with land sale (then use it or lose it)
- Licences should be transferable
- Sale of water rights - need to prevent speculation (not an issue if use it or lose it applies)

CONCLUSIONS

1. The current provisions for transferring licences should be retained.

Overview of what we heard

The first in time first in right principle of water allocation was supported because of the need for security of supplies. As well, priorities of use were supported because of the need to ensure that priority users are assured of water supplies in the future. The direction given was to clarify in the Act the manner in which these two concepts are to be mutually achieved.

Background

Precedence of use is established only after a licence is issued. It is established as the date of submission of the completed application form. Where two or more applications have the same date of submission, precedence is established according to the priority of water use. Should this be identical, the Act states that precedence will be determined as the regulations provide. There is currently no regulation to address this issue.

Detailed Comments

- Support for first in time first in right
- Priorities of use present priorities OK
- Clarify the relationship between first in time - first in right and the use priorities
- First in time first in right and priority of domestic use etc. OK
- Clarify seniority vs priorities of use
- Need adaptable tenure requirement - eg. Best management practices - give up % of allocation when renewal issued to provide supply for future priorities

CONCLUSIONS

1. *The need for a secure water supply and the need to assure priority users a supply of water requires that first in time first in right and priorities of use are mutually achieved. The Act must spell out precisely how this is to be achieved.*

Overview of what we heard

In general, most felt that the Crown should retain ownership of water.

Background

Currently the Crown owns the water.

Detailed Comments

- Water Ownership - Crown vs Private - integrated system (some of each)
- Do we need a new Act?
- Jurisdiction - provincial vs municipal - need to resolve roles and responsibilities
- Ownership of water - should stay with Crown. Any royalties should stay with province.
- Make water a marketable commodity

CONCLUSIONS

1. The Crown should retain ownership of water resources.

Overview of what we heard

Outside of comments directed at the Act, water storage needs were most frequently cited as the major issue. Two types of recommendations prevailed - the need for artificial storage where demands for water are exceeding supplies, and the need to protect and enhance natural water retention.

Detailed Comments

- Water retention - who will fund
- More instream storage needed, esp. on intermittent streams
- Smaller dams on Assiniboine preferable to larger dams eg. Holland Dam (unstable banks)
- Another dam on Assiniboine near Shellmouth
- Long-term water supply development
- More resources for engineering and planning
- Retention areas on river - stabilize and increase water supply
- Legislation should encourage water storage (environmental considerations)
- Harnessing of Birdtail River - reservoirs developed, hold back but compensation would have to be developed, all tributaries on southside of Riding Mountain = water management
- Storage development in the Bossy Creek area
- Irrigation possibilities in area - potatoes. More short term (small scale) storage. No need for compensation when landowners will use stored water
- Compensation for storage of water for downstream uses
- Why not promote water retention?
- Compensation for acreage used as retention ponds - only then will wetlands stay - Assessment Branch needs to be contacted to reflect these acreages
- Need more on stream and off stream water storage
- Retention of water (spring runoff) - any scale of dam system - irrigation, recreation
- Water retention potential is high - linked to an overall water management plan
- Water not in the right place at right time - correlation between drainage and water use - more water retention areas
- Retention pond or reservoirs to store water and let it out in time of low levels
- More water retention of spring runoff
- Water retention projects
- Water retention areas - recharge - Rat River
- Smaller dams to control water flows
- Compensation for landowners who have dams on their land to control water
- Control drainage of peat bogs
- Promote water storage at source in spring - infiltrate into soil. Would reduce problems with high spring runoff
- Compensation for landowners who have dams on their land to control water
- Increased water storage impacts on fish habitat, spawning and passage

CONCLUSIONS

1. *A water retention strategy is required with the emphasis on areas where demand is approaching or exceeding existing supplies.*

2. *Natural water retention sites should be protected and enhanced.*

Overview of what we heard

The maintenance and enhancement of aquifer recharge received a significant number of suggestions with many aimed at the impact of drainage on reducing recharge.

Detailed Comments

- Aquifer recharge should be promoted
- Aquifer recharge - can we help mother nature?
- Groundwater recharge - give priority to applications which promote groundwater recharge
- Sustain and enhance water supplies through recharge
- Enhanced natural recharge for aquifers to increase supplies
- Drainage of gravel pits - impact on adjacent domestic wells - should assess impacts before draining, must follow requirements when doing - need better co-ordination between Mines and Water Resources concerning water management in pits, quarries

CONCLUSIONS

1. Activities, programs and land uses, should where possible, maintain and enhance aquifer recharge.

Overview of what we heard

There was concern and uncertainty with respect to First Nations involvement in water management.

Detailed Comments

- Aboriginal Water Rights - not addressed in the Act
- Best model for management is co-operative planning effort by all stakeholders
- Difference between First Nations and rest - needs blanket policy - now domestic use. Future issue - waterways that run through reserves? Provincial right to the resource
- Aboriginal Water Rights - need to develop and maintain good working relationship

CONCLUSIONS

1. The involvement of First Nations interests in water management must be addressed.

Overview of what we heard

There was a lot of concern over water quality protection, in particular for groundwater.

Detailed Comments

- Protection of water quality - monitoring
- Encourage upstream jurisdictions to protect water quality entering Manitoba
- Geothermal heating/cooling systems present a serious threat of pollution - what checks are in place/remedial action? Change from methanol coolants
- Concerned about temporary asphalt plants being set up in gravel pits
- The impact of livestock on water quality
- Water quality re: livestock operation: open wells. Encourage people to document well placement - state of Minnesota has program now
- Concerned about chemicals in the runoff from agricultural land
- Interprovincial - water quality - monitoring quality at border - quality within provincial responsibility of the Act
- Urban drainage and pesticide use much higher than rural, need zoning, planning, and education to control development
- Since no environmental assessment of intensive livestock operations, is DNR encouraging changes in classes of development regulation under *The Environment Act*?

CONCLUSIONS

1. *All provincial regulations need to be reviewed to ensure that water quality is protected.*

2. *Water quality should be addressed through watershed and aquifer plans and include interprovincial and international watersheds.*

Overview of what we heard

Many comments were received concerning items which did not fit into other categories, or which concerned more than one category. Several comments addressed specific water supply sources.

Detailed Comments

- Lack of good information and advice on water sources
- Economic development management of water resources and wastes
- No overall vision (what about the big picture) water allocation vs drainage, integration of government functions and responsibilities between and within departments - this is required to guide the development of an act
- Times of water storage - knowing water source - knowing use - deciding on use in times of monitoring shortage
- Lack of political will to address the issues - water is an important resource. There is currently a lack of funding to address problems, and a lack of support for staff recommendations
- Water allocation and use has to be tied to drainage
- Flood control should be the #1 priority of Shellmouth Dam
- Compensation must be considered if any changes are made to water levels at Shellmouth
- Restoration of forests has to be part of the overall management program
- Water levels at Shellmouth Dam - must not be raised beyond the current level
- Lake of the Prairies - loss of land, would need recreation tourism to compensate. Is difficult with large level fluctuation. Need to raise operating level - more storage, reduce drawdowns
- Different rules for different part of province
- Lack of recognition of Shellmouth Dam - as main source for Assiniboine River
- Government slow to react to issues - more regular local public involvement needed
- Stream flow management for irrigation must correspond to crop and soil requirements
- Water is not a right but a limited resource
- Better knowledge of the aquifer (how much is there? where is it? we are presently just scratching the surface)
- Livestock producers need to know if threshold limits for agricultural use will change or will enforcement levels change? Water licensing should not be a controlling factor for livestock operations - should continue to be zoning
- Enforcement - NRO redefine role
- Do we have an overall water budget for Manitoba?
- Easement term vs licence term - licences for projects need to be compatible with easements on lands used by the project
- Difficult to get renewals on easements - easements should be perpetual if project has a valid license
- Lack of water in the region, specifically Oak Lake Aquifer - will over allocation draw down the aquifer to dangerous levels - drainage over the aquifer will lower aquifer in dry years
- Maintain discretionary powers rather than tightening regulations (need appeal or mediation process to avoid abuse/resolve disputes with regulators)
- Educate public on standards needed to install water supplies
- Recognize/deal with land value due to water rights
- Education - inform property owners about programs available through conservation districts etc.
- Provision of water supplies eg. Winnipeg selling water to Headingley - provincial support to develop own water supply
- Placement of wells - checking sealing of old facilities
- Wells being installed without authorization - domestic wells should be authorized as well - to get idea of quantity being used and to know about construction techniques
- Well drillers should be licensed or be required to submit more complete drill logs. More public education and awareness is needed about abandoned wells and decommissioning
- Some property owners are afraid to admit they have an abandoned well on their property because they figure it will cost money to deal with it
- Do not destroy wetlands
- Need to recognize risks in development. Currently when people develop in flood prone land, they expect flood protection later

- Conflict between *The Wild Rice Act* and the Act? Eg. Wild Rice License vs. water level management by Water Rights Licence. Applies where Wild Rice Licence issued after Water Rights Licence. Similar problem with Crown lands sales - require additional drainage - need better co-ordination between regulators
- Waterfowl problems are caused by Ducks Unlimited water control works regulated under the Act
- Hydro impacts on other resources - agriculture, other natural resources
- Concerns expressed about geothermal wells contaminating water - needs license - temperature change
- No license for domestic use?
- Drainage problems tend to negatively affect fish habitat - remove spawning habitat and change hydrograph shape, add nutrient to lakes - need to recreate habitats in some locations
- Impacts of Hydro projects
- Decommissioning projects
- Encourage water conservation through legislation eg. Conservation toilet in the building code
- Cost of infrastructure should be made clear to the people
- Overriding objective should be ..."for people of Manitoba and long term sustainability of ecosystems"
- Increased water shortage - impacts on fish habitat/spawning/passage
- Water, wastewater, conservation are not legislated. Municipalities need idea of normal consumption. Conservation districts could assist in education

CONCLUSIONS

1. Public and stakeholder involvement is an essential component of water management.

Overview of what we heard

Most of the drainage issues have been dealt with in the Land Drainage Review.

Detailed Comments

- Unauthorized drainage is making management of Shellmouth Reservoir difficult and takes away from freshwater supply of the Assiniboine - quality of water is jeopardized - drainage causes pollutants to infiltrate into the river (water quality - feedlots)
- Beaver control - major expense for landowners/municipalities. Need integrated cost-shared program for control/management
- Enforcement of the Act especially drainage - need to correct existing problems (violations) with present Act, administration is the key, M.O.U. with AMM re: jurisdiction, responsibilities, priorities
- What requires licensing (drainage) and beaver dam removal? Any diversion requires licensing, enforcement depends on significance/impact, deal with beaver dams before they become permanent features
- Drained areas should be grassed to prevent soil erosion. Drained areas affect water quality
- Clarify jurisdiction of drainage between province and municipalities
- Water not in the right place at right time - correlation between drainage and water use - more water retention areas
- Backlog of drainage licensing is real issue - overland drainage itself is a problem. Retention pond or reservoirs to store water and let out in time of low levels
- Unauthorized work being done to drain land - done before any enforcement can be put into place - all in the interest of "economics". "If someone wants to drain land then someone else should be paid compensation for holding the water"
- Smaller dams to control water flows
- Control drainage of peat bogs
- International drainage
- Do not destroy wetlands
- Drainage problems tend to negatively affect fish habitat - they remove spawning habitat and change hydrograph shape, add nutrient to lakes - need to recreate habitats in some locations
- On farm drainage an issue
- To what extent does drainage impact on water supply and flooding? Generally drainage activity primarily in Red River Valley - where it does not affect aquifer recharge significantly. However, in some instances recharge can be affected
- Relationship between drainage and IFN requirements? - eg. Netley Creek drainage improvement vs wetlands - drainage effects hydrograph shape and duration.
- Wetland drainage/restoration - pressure to drain on private wetlands, desire to retain Crown wetlands - impediments to wetland restoration
- Drainage - issue- riparian zones - aquatic life - instream flows - should be part of allocation

CONCLUSIONS

1. Drainage and Use and Allocation must be components of the watershed planning process.

INDIVIDUAL WORKSHOP REPORTS

Overview of what we heard

Water allocation and the amount of water available for allocation were considered very important issues. In this regard watershed planning and storage of water were considered a must. Water pricing, transfer of licenses and first in time first in right were supported.

Administration of *The Water Rights Act* (the Act)

Licensing

- "Use it or lose it" - should be retained/strengthened in the Act
- Concerned about over allocation of water
- Licensing backlog and enforcement (put response deadline in the act or regulations?)
- Need to cleanup backlog

Monitoring and Enforcement

- Water use records - should be kept and compiled (crop insurance requires water use records, however, accuracy may be an issue, annual and long term)
- Policing licences

Fees

- Charge for water OK retain (protect rights)
- Ear marking license fees for water management purposes
- Equitable water pricing.
- First in time first in right (compensation when shortages are experienced)

Additions to the Act

Water Quality/Quantity Integration

- Water quality should be recognized in allocation and use
- Water quality - The effects of the Maple Leaf Plant on water allocation should be considered - need to protect our water

Watershed Planning

- Watershed planning should be initiated
- A comprehensive plan for Assiniboine River is needed
- Licences should be based on watershed plan
- Reservations in each river reach for future development - irrigation, industrial or? (Local input into allocations from reserves) Solution: Watershed plans with regular reviews - 10 years
- Roles of local government vs. provincial government in water management must be clear

Priorities of Use

- Priorities - recreation vs. food production?
- Water rights priorities - conservation should be higher

Transfer of Licences

- The provision to transfer licences should be maintained
- Transfer of licences - should be automatic with land sale (then use it or lose it)
- Licenses should be transferable

Fundamental Changes to the Act

First in Time First in Right vs Priorities of Use

- The principle of first in time - first in right should be retained

Public vs Private Ownership

- Water Ownership - Crown vs Private - integrated system (some of each)

Water Supply and Management

Water Storage

- Water Retention - who will fund
- More instream storage needed, esp. on intermittent streams
- Smaller dams on Assiniboine preferable to larger dams eg. Holland Dam (unstable banks)
- Another dam on Assiniboine near Shellmouth
- Long-term water supply development
- More resources for engineering and planning
- Retention areas on river - stabilize and increase water supply
- Legislation should encourage water storage (environmental considerations)

Groundwater Recharge

- Aquifer recharge should be promoted.

Other

- Lack of good information and advice on water sources
- Economic development is dependent on management of water resources and waste water
- No overall vision (what about the big picture) water allocation vs drainage, integrate government functions and responsibilities between and within departments - this is required to guide the development of an act
- Times of water storage - knowing water source - knowing use - deciding on use in times of monitoring shortage
- Lack of political will to address the issues - water is an important resource, there is a lack of funding to address problems, and lack of support for staff recommendations.
- Water allocation and use has to be tied to drainage
- Implications of the current challenge to *The Resource Transfer Act* of 1930, transferring water resources to the province, and the need to address aboriginal needs in water allocation

Overview of what we heard

Legislative comments included support for monitoring, enforcement and user fees. Much of the discussion focussed on the impacts of drainage and the local impacts of the Shellmouth Dam.

Administration of the Act

Monitoring and Enforcement

- Monitoring for irrigation use? All licence users to submit use information including irrigation - to be phased for existing users (2-4 years)
- Water use data and monitoring - require reporting
- Enforcement of licenses - water use and drainage - more staff/effort required.

Fees

- Nominal fee for water use - use fees for better management, monitoring and research

Additions to the Act

Water Export and Interbasin Transfers

- Water export - know long term impact before approving, only if a surplus available

Fundamental Changes to the Act

First in Time First in Right vs Priorities of Use

- Priorities of use - present priorities OK

Water Supply and Management

Water Storage

- Harnessing of Birdtail River - reservoirs could be developed to hold back water but compensation would have to be provided. All tributaries on southside of Riding Mountain contain potential storage sites
- Storage development in the Bossy Creek area
- Irrigation possibilities in area - potatoes. More short term (small scale) storage. No need for compensation when landowners will use stored water
- Compensation for storage of water for downstream uses

Other

- Flood control should be the #1 priority of Shellmouth Dam
- Compensation must be considered if any changes are made to water levels at Shellmouth
- Restoration of forests has to be part of the overall management program
- Water levels at Shellmouth Dam - must not be raised beyond the current level
- Lake of the Prairies - loss of land, would need recreation tourism to compensate. Is difficult with large level fluctuation. Need to raise operating level - more storage, reduce drawdowns
- Different rules for different part of province
- Lack of recognition of Shellmouth Dam - as main source for Assiniboine River flows

Drainage

- Unauthorized drainage is making management of Shellmouth Reservoir difficult and takes away from freshwater supply of the Assiniboine - quality of water is jeopardized - drainage causes pollutants to infiltrate into the river (water quality - feedlots)
- Beaver control - major expense for landowners/municipalities. Need integrated cost-shared program for control/management
- Enforcement of Act especially drainage - need to correct existing problems (violations) with present act, administration is the key, M.O.U. with AMM re: jurisdiction, responsibilities, priorities
- Deal with beaver dams before they become permanent features

Overview of what we heard

Concerns regarding the current licensing process included addressing the backlog of applications and enforcing the Act. The need for planning, particularly with input from local people, and retention of water were considered necessary for better water management. Fees for use, export of water and ownership of water rights were identified as issues to be addressed.

Administration of the Act

Licensing

- Previous neglect, small staff dealing with use and drainage, increased demand (irrigation), care in allocation as limits reached, high number of renewals (50% of backlog)
- Licensing backlog - increasing complexity (staffing, resources, local involvement i.e. municipal)
- Licensing backlog - interim licences? Producers need security of supply to get loans. Additional staff needed to process licences
- Expired licences less problem than new applications - easier to process renewals since the water is already allocated
- Extra staff required getting a handle on licensing backlog, using retired personnel or hiring university students
- Licensing backlog - some applications are fast tracked?
- Unused licensed water (when do you lose what you're not using?)
- More staff but decentralize decisionmaking to the regions

Monitoring and Enforcement

- Metering & monitoring - reporting of water use, enforcement issues, actual use vs licensed use
- Enforcement - Unauthorized works, monitoring/metering
- Enforcement of orders - better enforcement needed, more teeth
- Use it or lose it - licence holders should not tie up water
- Enforcement of *The Water Rights Act*

Fees

- Water use charges - cover management costs and monitoring costs
- Water fees, should be charged on non-domestic usage and used in a separate water fund - charge all licenses (present and future)
- Water use charges should be different for different sources - recognize extra expense of developing off-stream storage by charging lower rates for water from these sources

Additions to the Act

Instream Flows, Ecosystem Needs, Aesthetics

- Instream flows - not covered in act. What are they? Domestic/aquatic uses - "health of environment", covered in licensing through reservations

Watershed Planning

- Watershed planning - combine drainage and allocation
- Need local watershed planning group
- Plan today for 20-50 years ahead (population growth, livestock growth)
- Conservation districts should represent watershed

Water Export and Interbasin Transfers

- Water export, must be co-ordinated with other jurisdictions. Bulk water should not be for export. Also transfers are opposed
- Water export - only after local need is met

Water Quality/Quantity Integration

- Use and allocation needs linked to quality? (if it's polluted - it's done)
- Combine water quality and quantity management in one department

Fundamental Changes to the Act

Public vs Private Ownership

- Jurisdiction - provincial vs municipal - need to resolve roles and responsibilities
- Make water a marketable commodity

Water Supply and Management

Water Storage

- Why not promote water retention?
- Compensation for acreage used as retention ponds - only then will wetlands stay - Assessment Branch needs to be contacted to reflect these acreages
- Need more on stream and off stream water storage
- Retention of water (spring runoff) - any scale of dam system - irrigation, recreation
- Water retention potential is high - linked to an overall water management plan
- Water not in the right place at right time - correlation between drainage and water use - more water retention areas
- Retention pond or reservoirs to store water & let out in time of low levels

Groundwater Recharge

- Aquifer recharge - can we help mother nature?
- Give priority to water management applications, which promote groundwater recharge as a project component

Water Quality

- Protection of water quality - monitoring must be maintained and strengthened

Other

- Government slow to react to issues - more regular local public involvement
- Stream flow management for irrigation must correspond to crop and soil requirements
- Water is not a right but a limited resource
- Better knowledge of the aquifer (how much is there?, where is it?, We are presently just scratching the surface)
- Livestock producers need to know if threshold limits for agricultural use will change or will enforcement levels change? Water licensing should not be a limiting factor for livestock operations - should continue to be zoning
- Enforcement - redefine roll of NRO's
- Do we have an overall water budget for Manitoba?
- Easement term vs licence term - licences for projects need to be compatible with easements on land used by the project
- Difficult to get renewals on easements - easements should be perpetual if project has a valid license
- Lack of water in the region, specifically Oak Lake Aquifer - will over allocation drawdown the aquifer to dangerous levels - Drainage over the aquifer will lower aquifer in dry years
- Maintain discretionary powers rather than tightening regulations (need appeal or mediation process to avoid abuse/resolve disputes with regulators)

Drainage

- Drained areas should be grassed in to prevent soil erosion. Drained areas affect water quality
- Clarify jurisdiction of drainage between province and municipalities
- Backlog of drainage licensing is a real issue - overland drainage itself is a problem
- Unauthorized work being done to drain land - done before any enforcement can be put into place - all in the interest of "economics" - "if someone wants to drain land then someone else should be paid compensation for holding the water"

Overview of what we heard

All agreed that the backlog of applications be addressed as a priority and that watershed planning be instituted. Local input is a must. Priorities of use should be used to set allocation limits. Water retention and water quality protection should be promoted. Institution of fees for use received mixed views. There was concern over the fact that residential subdivisions using individual wells are termed domestic and therefore do not require a licence while cumulatively their use is significant.

Administration of the Act

Licensing

- Colonies should fall under two classes of use, domestic for homes and agriculture for their farms (livestock operations)
- When new licences are approved for large barns the wells already in this area should be guaranteed water. Adequate water supply should be approved before the barn is started
- Lack of staff resources to enforce/deliver services/regulations/licencing - stop the cutbacks
- Licensing backlog - is use already beyond sustainable limit is some areas? Category approvals? Focus on projects with larger consumption/risk/unknowns
- No licence for uses which do not require licences (remove frivolous applications from licensing backlog)
- Licensing backlog - apply local knowledge into licensing & procedures - more staff to handle backlog - *The Water Rights Act* should remain a provincial responsibility (enforcement staffing) - simplify act to make it understandable and manageable

Monitoring and Enforcement

- Record keeping - water use

Fees

- Fees would provide $ for enhancing water quality in groundwater
- Users who own infrastructure are already paying for well, pump, etc. - water use reporting more important than user fees in promoting water conservation
- Control over water use - should have increasing cost with increasing demand to promote water conservation. Need uniform policy across province - one municipality cannot do alone. Municipal charges are for infrastructure only - operating and capital replacement. There will be pressure on municipalities in the future to comply with the principles of sustainable development. P.U.B. approves fee structures
- Water use fees - apply to all users (including domestic?). Must have equitable way of charging, but could have different fees for different purposes. Must be worth collecting?

Additions to the Act

Watershed Planning

- Dealing with water issues on a watershed basis
- Watershed districts planning, should use local input and promote water retention
- Promote watershed planning
- Local water groups should set priorities
- More of a say at the local level
- Explore concept of regional water supply management - local control of aquifers
- How to allocate water. Province should retain control - concern about politics of allocation - will small users (RM's/business/individuals) be squeezed out?

Water Export and Interbasin Transfers

- Export of water GATT Ruling Canada vs. USA fees based on ruling

Priorities of Use

- Develop priority principles to be used as allocation limits are approached
- Development (urban subdivisions licensing priorities)
- Review Domestic vs Agriculture water use definition
- Create a level playing field - R.M.'s vs Towns on allocation of water - towns are regulated - no regulation of R.M. use

Fundamental Changes to the Act

First in Time First in Right vs Priorities of Use

- Clarify relationship between first in time first in rights and use priorities
- Satisfied with current first in time first in right and use priorities

Water Supply and Management

Water Storage

- More water retention of spring runoff
- Water retention projects
- Water retention areas - recharge - Rat River
- Smaller dams to control water flows
- Compensation for landowners who have dams on their land to control water

Groundwater Recharge

- Sustain and enhance water supplies through recharge
- Enhanced natural recharge for aquifers to increase supplies
- Drainage of gravel pits - impact on adjacent domestic wells - should assess impacts before draining, must follow requirements when doing - need better co-ordination between Mines and Water Resources concerning water management in pits, quarries

Water Quality

- Encourage upstream jurisdictions to protect water quality entering Manitoba
- Geothermal heating/cooling systems present a serious threat of pollution - what checks are in place/remedial action? - Change from methanol coolants
- Concerned about temporary asphalt plants being set up in gravel pits
- The impact of livestock on water quality
- Water quality re: livestock operation open wells - encourage people to document well placement - State of Minnesota has program now

Other

- Educate public on standards needed to install water supplies
- Recognize/deal with land value due to water rights
- Education - inform property owners about programs available through C.D.'s etc.
- Provision of water supplies eg. Winnipeg selling water to Headingley - provincial support to develop own water supply
- Placement of wells - checking sealing of old facilities
- Wells being installed without authorization. Domestic wells should be authorized as well to provide a better idea of quantity being used and construction techniques
- Well drillers should be licensed or required to submit more complete drill logs. More public education and awareness about abandoned wells/decommissioning (or more complete information requirements)
- Some property owners are afraid to admit they have an abandoned well on their property because they figure it will cost money to deal with it
- Pricing of water

Drainage

- International drainage
- Do not destroy wetlands
- Control drainage of peat bogs

Overview of what we heard

Watershed planning, water quality and incorporating aboriginal interests into the Act were the primary issues identified.

Administration of the Act

Licensing

- Mothballed mines and other facilities tie up supplies - use it or lose it?
- Water Rights licence application should be reviewed by DFO to check for *The Federal Fisheries Act* requirements? - no net loss policy is difficult to administer
- Domestic use should be licensed

Monitoring and Enforcement

- Private wells should be monitored & metered

Additions to the Act

Instream Flows, Ecosystem Needs, Aesthetics

- Minimum instream flow - need to be maintained (more important where water is regulated for use or recreation)

Watershed Planning

- Recommend watershed based planning
- Watershed management - setting limits for resource use/harvesting - need to consider development options and impacts - compensation for lost opportunities to benefit other resources? Eg. Retaining forest land, not draining
- Offloading - Conservation District ideal organization to do local planning. Important to province to have local input

Water Export and Interbasin Transfers

- Protection from water diversion and export should be strengthened
- The federal government can't dictate on the export of water as it is a provincial resource - support for policy on no bulk export of water and no interbasin transfer

Fundamental Changes to the Act

Water Supply and Management

Water Storage

- Promote water storage at source in spring - infiltrate into soil. Would reduce problems with high spring runoff

Aboriginal Peoples Interests

- Aboriginal Water Rights - not addressed in the Act
- The best model for management is co-operative planning effort by all stakeholders
- Difference between first nations and rest - needs blanket policy - now domestic use - future issue native right to natural resources - waterways that run through reserves? Province right to resource
- Aboriginal water rights - need to develop and maintain good working relationship

Water Quality

- Concerned about agricultural chemicals in runoff from agricultural land. Need to educate landowners concerning responsible management practices
- Interprovincial - water quality - monitoring quality at border - quality within provincial responsibility of act
- Urban drainage and pesticide use much higher than rural - need education/zoning/planning to control development
- Improved water quality metering, but consultation before metering implemented

Other

- Need to recognize risks in development. Currently when people develop on flood prone land they expect flood protection later
- Conflict between *The Wild Rice Act and the Act*? Eg. Wild Rice Licence vs. water cover management by Water Rights License. Applies where Wild Rice Licence issued after Water Rights Licence. Similar problem with Crown lands sales - require additional drainage - need better co-ordination between regulators
- Waterfowl problems are due to Ducks Unlimited water control works regulated under the Act
- Hydro impacts on other resources - agriculture, other natural resources
- Concerns pressed about geothermal wells contaminating water. Should require licensing to addresses temperature change
- Impacts from hydro projects
- Decommissioning projects should be addressed
- Water, wastewater, conservation are not legislated - municipalities need idea of normal consumption. Conservation districts could assist in education

Drainage

- Drainage problems tend to negatively affect fish habitat - remove spawning habitat and change hydrograph shape, adds nutrients to lakes - need to recreate habitats in some locations
- On farm drainage an issue
- Drainage, riparian zones, aquatic life, instream flows should all be part of water allocation

Overview of what we heard

Watershed planning, allocation of water and availability were identified, along with instream flow, as important issues for sustaining the resource. Fees for use were not agreed upon.

Administration of the Act

Licensing

- Should make better estimates of domestic use
- Allocation most critical in drought years. Matching lowest supply and minimum use
- Increasing allocation beyond firm supply increases risk or shortage
- More staff/resources needed for all aspects of water management
- Look at effects on aquifer and adjacent wells
- Impacts on adjacent wells must be addressed by licence

Monitoring and Enforcement

- Fines under the Act - for non-licenced users - not enforced - should have higher minimum fines
- "Use it or lose it" is anti-conservation - should encourage irrigation methods which do not waste

Fees

- Water pricing for domestic water use
- If water was a commodity, NAFTA involvement would depend on pricing structure - make sure NAFTA is not involved
- Water charges to promote water conservation for irrigation
- Could require best management practices for irrigation (and revoke licence if not followed) - should not rely on economics of application to minimize application of water for irrigation

Additions to the Act

Instream Flows, Ecosystem Needs, Aesthetics

- Look at IFN for surface sources (required by Sustainable Development Policies, not the Act)
- Monitoring programs should include ecological criteria and ecological/biological indicators, not just physical parameters such as turbidity - must show ecosystems are being sustained

Watershed Planning

- Watershed planning should include cumulative impacts i.e. intensive livestock operations
- Concerned about incremental development/diversion - prefer small scale developments
- Need conservation district on watershed boundaries
- More emphasis on watershed planning

Water Export and Interbasin Transfers

- New legislation should ban export of water

Co-management

- Expand role of conservation districts - the right players are in districts

Water Quality/Quantity Integration

- Specifications for measuring water quality - ecosystems standards rather than chemical parameters
- Legislation changes to solidify relationship between water quality and quantity - not looking at combining acts, but continuing co-ordination

Priorities of Use

- Should instream flow be top priority in drought? Currently protected through reservations

Fundamental Changes to the Act

First in Time First in Right vs Priorities of Use

- Clarify seniority vs priorities of use
- Need adaptable tenure requirement - eg. Best management practices - give up % of allocation when renewal issued to provide supply for different future priorities

Public vs Private Ownership

- Ownership of water - should stay with Crown. Any royalties should stay with province

Water Supply and Management

Water Storage

- Increased water shortage - impacts on fish habitat/spawning/passage

Water Quality

- Since no environmental assessment of intensive livestock operations, is DNR encouraging changes in classes of development regulation under *The Environment Act*?

Other

- Encourage water conservation through legislation eg. Conservation toilet in the building code.
- Cost of infrastructure should be made known to the people
- Overriding objective should be "for people of Manitoba and long term sustainability of ecosystems"
- Legislation options - "Aquatic Resources Act" - "Water, Fish and Wetlands" - "Water Act" incorporating all water legislation

Drainage

- Wetland drainage/restoration - pressure to drain on private wetlands, desire to retain Crown wetlands
- Act should not be an impediment to wetland restoration

STAKEHOLDERS SUBMISSIONS

REVIEW OF LEGISLATION, ALLOCATION AND POLICIES

December 7th, 1998

The four regional irrigation associations were invited by the Water Resources Branch to make separate presentations to the committee reviewing legislation, allocation and policies. The irrigation associations felt, that in spite of the differences in irrigation between each region, it was important that all concerns be combined into a single presentation, which would be delivered by the Association of Irrigators in Manitoba (A.I.M.).

All Manitobans use water resources either for drinking, recreation, industrial or agricultural purposes. Some users are easily identifiable-like the irrigators, and others are more difficult to identify, such as recreational users. Given the diversity of users, A.I.M. feels that it makes sense that the authority to regulate the use of water should rest with the government through the Water Resources Branch and that the costs of regulation, research, monitoring and policing should not be paid by those users that are easily identifiable, but be shared equally through tax dollars.

The sustainability of water resources is critical to the economic survival of A.I.M.'s members. A.I.M. and its membership feel that sustainability of the water resource can only be achieved through the following:

1. Orderly development through the issuing and policing of licenses.
2. On-going research to determine the minimum-in-stream flows or sustainable withdrawal rates from aquifers.
3. Extensive stream and aquifer monitoring to confirm the models predicting the sustainable yield, and to facilitate in the day-to-day management of stream flows.

In spite of A.I.M. supporting the branch's role in water resource management, it feels that the branch has neglected its mandated responsibility for water resources and allowed regulation to deteriorate to the point where the irrigators and/or public confidence has been eroded and where future sustainability is in jeopardy. The Water Resources Branch must work towards regaining the public's confidence by fulfilling its mandate of regulation, research, monitoring and policing. This will not happen if the Minister does not place a high priority on water management by demanding that the branch fulfill its mandate and by providing the financial resources required to do the job.

A.I.M. has the following specific concerns regarding *The Water Rights Act* and the management of water resources.

1) Water Rights Licensing Policy

Duration of licences. Currently there are licences issued for durations ranging from 5 to 20 years and there have been proposals to make some irrigation licences renewable on an annual basis. We recognize that there may be reasons to issue licences of different lengths, especially where the sustainability of the water source is unknown. The association feels that all licences for a specific water source should be issued for the same duration, regardless of the priority of the user (i.e. municipal or irrigation). Also, the duration must be at least 20 years to satisfy the demands of credit institutions. The cost of developing irrigation is very high ($500 to $1,000 per acre) and credit institutions want some assurance that the borrower has long term rights to the water.

2) Licence cancellation policy. The Act is clear in dealing with the cancellation of a licence and compensation of the licensee in the situation where there is a new application on a fully allocated water source. The Act states (paraphrased)

> Where a person applies for a licence to use water when the water has been allocated, if the purpose for which the application will use the water is higher in priority than that of the purpose of one or more of those other licensees, the minister may cancel or restrict the rights under the licence of any one or more of those other licensees, ranking lower than the applicant in priority of purposes. The Act goes on to state: A person whose existing licence is cancelled or whose rights under his existing licence are restricted in favor of a new application for a licence is entitled to receive from the applicant compensation for any loss or damage suffered by him as a consequence of the cancellation or restriction.

The Act is silent in the situation where there is a shortage of water as a result of 1) seasonal drought or 2) it is determined that a water source is allocated beyond the sustainable yield, and licences must be cancelled or restricted. In the above situation, how will the minister determine which licence(s) to cancel or restrict. When a licence is cancelled or restricted in this situation, will compensation be paid and who will pay the compensation? For example: It has been determined that the Winkler Aquifer is over allocated, so the W.R.B. has requested that all users have their allocations cut back by fifty percent. This completely ignores the rights of priority and seniority. The association suggests that the users on a water source should first be given the opportunity to meet and work out a system of sharing water. If these discussions fail to resolve the problem, then the higher priority licenses can cause the cancellation or restriction of the rights of licences with lower priority in the order of priority established under section 9 of the Act. Compensation must be paid by a junior licence as determined by the first in time, first in right principle according to the following:

> A person whose existing licence is cancelled or whose rights under his existing licence are restricted in favour of a higher priority junior licence is entitled to receive from the higher priority licence compensation for any loss or damage suffered by him as a consequence or the cancellation or restriction.

Clarify the meaning of "allocation". There is a misunderstanding between the Water Resources Branch and the licensees as to the exact meaning of the "allocation" of water listed on the licence. The licensee assumes that he can use the full quantity of water allocated on the licence each year on any parcel of irrigatable land, so long as the water is drawn from the aquifer basin or stream reach where the allocation was made. The Water Resources Branch's definition of allocation differs from that of the licensee in that they assume that the irrigator is only utilizing a portion of the total allocation for the following reasons:

1. Climate and survey data indicates that on average less than six inches of supplemental irrigation water is required annually to produce a crop.

2. The licence is restricted to a specific parcel of land and the W.R.B. is assuming that this parcel is only planted to irrigated crop approximately one out of three years, so the allocation of water is not used every year.

The association requests that the W.R.B. clear up the definition of annual withdrawal on the licence. The association suggests the branch use the following definition of "allocation" listed on the licence:

> The licensee has the right to use the entire allocation of water each year on any parcel of irrigatable land, so long as the water is drawn from the aquifer basin or stream reach where the allocation was made. Prior to the irrigation season, the licensee is obligated to inform the Water Resources Branch of the land location(s) where the water will be applied.

Water Rights Licence Application Form and Process

A.I.M. requests that Water Rights Licence application form be revised so that all of the pertinent information required to process the application is requested. A more comprehensive form would eliminate the time required by the branch's staff to contact the applicant for additional information.

More complete information could be collected if assistance were provided to the applicant in filling out a Water Rights Licence application. The assistance could be provided through the following options:

1. Use the regional irrigation associations or, in the situation where a regional association has no staff, a private consultant as an agent to assist the applicant in filling out the Water Rights Licence application and to provide the detailed information regarding the withdrawal and use of the water. This would ensure that the W.R.B. receives a completed application and would eliminate some of the information gathering work currently provided by overworked licensing staff. This option would also ensure more contact between the regional associations and irrigators.
2. W.R.B. establishes a rural office for the purpose of making the initial contact with the irrigator and assisting in filling out the Water Rights Licence application.

Priority Setting

The Water Resources Branch is investing a tremendous amount of staff time and energy in a flow metering initiative while more important issues receive little attention. The branch proposes that all irrigation pumps be fitted with a flow-metering device at the irrigators' expense and that the information be communicated to the branch on an annual basis. Irrigation surveys conducted in 1991, '94 and '97 clearly indicate that the irrigators are using significantly less water than is allocated. Flow metering would only confirm what is already known; irrigators are not exceeding their allocations. By contrast the following unresolved issues are having a large impact on public's confidence in the branch and the sustainability of the water resource:

1. **Clear up application and licensing backlog**. Currently, there is a backlog of 440 outstanding water use applications and 350 licences that have expired and require renewal. Some applicants report having to wait up to five years to receive a licence. The backlog of outstanding water use applications and licence renewals has more of an impact on sustainability, allocations and public opinion than obtaining objective pumping data through flow metering. In spite of this, the W.R.B. continues to give flow metering a very high priority.

2. **Calculate the Quantity of Water Available for Allocation**. The quantity of water available for allocation is determined by subtracting the sustainable yield and reserves for future uses from the total yield. Every effort must be made to determine the sustainable yield and reserves in consultation with A.I.M.

3. **Cancellation of Unused Licences**. The quantity of water tied up in unused licences is significant and is having an impact on irrigation development in Manitoba. Farmers, who genuinely intend to irrigate, are prevented from expanding into crops where there are high economic spin-offs (i.e. processing potatoes) because the water is tied up in licences that remained unused. A.I.M. recommends that the licensee be given one year to develop the irrigation infrastructure required to utilize the water or the licence will be cancelled and the water will be made available to other users.

Policing

A.I.M. and its members feel that orderly development of water through licensing and policing is required to ensure the health and sustainability of the resource. Unfortunately, because of the licensing backlog, development has been taking place without proper licensing and irrigators have little regard for the application process and the licence. Irrigators cannot be blamed for this situation. Almost no irrigation development would have occurred in the past five years had the irrigators followed the process of not developing until a licence was issued. However, important policing may be, it will be very difficult to enforce regulations until the Water Resources Branch has cleared up the backlog of licences and reduced the time required to process an application. Once this is accomplished, the W.R.B. will have the support of the irrigators.

Stream Flow Monitoring

In the past five years, the number of flow monitoring stations has been reduced as the result of funding cuts by both the federal and provincial governments. The historical stream flow data, which was collected by the Water Resources Branch and Environment Canada, is invaluable in determining the risk of floods and the volume of water available for all users (fisheries, wildlife, municipalities, domestic, irrigators, etc.) As allocations of water increase, it is more critical to monitor stream flows for the purpose of determining sustainable yields. The sustainable yield dictates the amount of economic development that can take place while ensuring that the stream remains healthy. The association recommends that the government of Manitoba make a commitment to provide sufficient funding to the stream-monitoring program so that adequate data for flood forecasting and minimum-in-stream calculations is collected and analyzed.

A.I.M. and its members have a huge stake in how *The Water Rights Act* is revised and enforced. The irrigators invest large sums of money in irrigation and their income is very dependent upon the availability of water. Also, the production and processing of irrigated produce contributes significantly to the Manitoba economy. The association urges the Water Resources Branch to recognize the importance of water to its members and to give A.I.M. the opportunity to address any proposed changes to *The Water Rights Act*.

TO: Steve Topping, Director
Water Resources Branch
Manitoba Natural Resources
200 Saulteaux Crescent
Winnipeg MB R3J 3W3
E-mail HYPERLINK mail to:stopping@nr.gov.mb.ca stopping@nr.gov.mb.ca

FROM: Alice Chambers
10 Burrows Road
Pinawa MB R0E 1L0
E-mail chambers @granite.mb.ca
Ph 204 753 8348

RE: Water Use and Allocation Review

Firstly, I would like to thank your department for organizing the Water Use and Allocation workshop in Winnipeg, which I found most interesting and informative. I like the format with actual presentations and discussions rather than what often passes for consultation - a few posterboards scattered around a room with no opportunities for interaction. I apologize for being rather late in sending in this response.

I was pleased that there was participation in the organization of these workshops by other provincial departments but was rather surprised to find that representatives of the primary users, Keystone Agricultural Producers and the Association of Irrigators in Manitoba were on the organizing committee. I would like to suggest that if there is stakeholder involvement in organizing workshops around issues that affect many sectors of the public, then those that are interested in conservation should be included to provide a balance to those primarily interested in use. I hope that the resultant drafts of the report of these consultations are being written and reviewed only by government departments.

ISSUES

Administrative:

There was a strong message to government from the Winnipeg workshop that the capacity of the Water Resources Branch is insufficient to effectively monitor, enforce and license water use across Manitoba. **I strongly support an increased allocation of human and fiscal resources to ensure that water quantity and quality are monitored and maintained as far as possible (given seasonal variations) at least at current levels**.

The department must have sufficient personnel and political support to monitor and enforce licence provisions and to ensure that public/business/industry/agriculture/municipal awareness and education programs are in place to reduce wasteful practices, promote conservation and protection of surface and ground water. Lengthy licensing review processes as a result of a backlog are frustrating for both the public and the public service and result in antipathy towards the provincial government. While the first in time situation is in place, it must also make it somewhat difficult to discuss eligibility for supply for newer allocation requests. This situation must be changed.

Studies have always shown that water pricing determines use. Manitobans are wasteful of water because there are either no charges or small charges for water. Unfortunately, undervalued "resources" do not receive the same priority for concern as those for which people have to pay. The discussion at the workshop around the use of water for irrigation did not convince me that water use is limited by the costs of pumping. **There should be water use charges for irrigation, perhaps on a sliding scale, with a threshold for which only a limited charge would apply and then increasing charges as use increases**. This would deter inefficiency and waste. Municipalities should be encouraged to implement water use monitoring and charges for use in

order to encourage water conservation. Apart from water conservation, this would also contribute to sustainable development as the economic costs of water and wastewater treatment and replacement of water treatment plants would be reduced. I find it hard to believe that there are only 29 industrial users of water in Manitoba. One only has to think of soft drink/juice/beer producers and bottlers, food processors, wood fibre users, cleaners, etc. to realize that there must be more than 29 users. Perhaps it is partly a question of knowing that licences for industrial use must be obtained. **The department should attempt to capture and charge all industrial users**. I also believe that there must be stronger legislative support for increased penalties for withdrawing water without a licenced. Certainly the fine awarded to PEPC for their lack of a water withdrawal licence was a paltry $12, 900, hardly a disincentive to industries that are totally dependent on using and sometimes abusing this public resource. I believe that the water use charges for industry also should be increased to reflect the value of the resource. At present they are a miniscule portion of the cost of doing business for industries that are dependent on water use and do not provide a disincentive to extravagant use nor an incentive to reuse water.

Missing from the present *Water Rights Act*:

Another message from the workshop which I strongly support is the priority of **protecting instream flow needs. Manitoba must ensure that the needs of those species that live all of their lives in water are the highest priority**. Changes to the Act must reflect this. The province has a policy of "no net loss" as far as fisheries are concerned and if water quality and quantity are maintained for aquatic species, they will be maintained for humans as well. Funding for research to determine the necessary levels of flow for instream flow needs, with a priority for those waters that are subject to present and potential human use, must be found. Maintaining instream flow needs also protects the aesthetic, spiritual and recreational qualities of surface water. Manitoba advertises itself as the land of shining, pristine waters - legislation needs to protect these assertions. Funding for education and awareness programs about the necessity for protecting water quality could be financed out of increased or new water charges.

Much more focus needs to be placed on the need for the protection of riparian areas from degradation or disappearance due to agriculture, housing, recreational facilities, forestry, or other "developments". One can still see cattle watering at the edges of or in waters, with no protection at the water's edge to prevent the spring run-off or continual run-off of agricultural wastes. One can also see housing that perches close to surface waters with manicured lawns (fertilizer and pesticide runoff) extending to the water's edge. There is insufficient staff and political will to monitor and enforce guidelines that are meant to protect surface water from the impacts of riparian activities, including roads. As well, there is increasing pressure from forestry companies to "manage" or log riparian areas, the same areas that are needed to provide leaf litter, woody debris to streams, to moderate runoff and stream temperature, and to provide habitat and corridors for numerous wildlife species. Remedial programs should be undertaken where shoreline erosion is a significant problem. It is impossible to separate water quality and quantity from surrounding land uses. Besides protecting surface water, ground water protection from harm from industrial, agricultural, over-allocation or other activities is required.

Manitoba needs a **wetlands conservation policy** that is then reflected in legislation, somewhat similar to that produced by the federal government some years ago in the Wetlands Policy for Canada. Although Manitoba has lost a high percentage of wetlands in southern Manitoba, we remain stewards of a high percentage of the remaining wetlands in Canada, many of which are unaffected by "development" at the present time but will have increasing pressures as human activities expand across the province. For southern wetlands, protection of wetlands on Crown Lands must be a priority and incentives must be found to enable private landowners to protect wetlands on private lands. At present there is nothing in legislation and little in policy to guide their protection and preservation. Wetlands freely provide tremendous ecological services, including flow stabilization, groundwater recharge and discharge, waste assimilation, wildlife habitat.

Protection and allocation should be planned and monitored on a watershed basis or some other scientifically acceptable and agreed upon geographical water unit measure. Cumulative impacts and the precautionary principle, where baseline information and knowledge are limited or the impacts of climate change are anticipated, must be included to ensure that instream flow needs are protected and over-allocation does not occur. This planning, protection and allocation process must be reflected in legislation.

I am against water exports as this would produce the idea that water is a commodity for private gain, rather than a common benefit for all. **I also reject the idea of interbasin transfers** from an environmental perspective, as well as from the perspective that it would not address the need for efficiency and conservation of water. Our Manitoba waters flow north and contribute to ecosystem needs and ecological integrity of waterbasins and species all along the routes. As well, interbasin transfers can result in the introduction of species that are not a natural component of the receiving ecosystem and increase the spread of exotic

species. I do not agree with the intent of Policy 3.5 of the SD Strategy *Applying Manitoba's Water Policies* which includes the possibility of interbasin transfers within the Hudson Bay drainage area after a complete assessment of the needs, alternatives, environmental, social, and economic impacts on the donor and receiving basins.

Co-management agreements may be possible in some circumstances as long as the province does not delegate any of the provincial responsibilities towards conservation and protection of water and as long as fish and fish habitat are not impacted (using fish to represent all aquatic species).

There is a need to integrate water quality/water quantity/fisheries and for legislation to reflect this. It is too early to see the introduction of an aquatic resources act but since the *Fisheries Act* and *The Water Rights Act* are both being reviewed, it is reasonable to include some degree of cross-over and recognition of the need for integration of ecosystem needs and human needs in the preamble or purpose of both acts. References to the integration of water quantity and quality and the maintenance of water quality through the Manitoba Environment licensing review processes should also be included in the new Act. *The Water Rights Act* should at least be changed to *The Water Resources Act* to reflect a change in focus from simply being an allocation act to being an act to protect, conserve, and sustainably use these most precious public assets.

Questioning the fundamentals of the Act:

First in time first in right vs priorities of use - priorities of use, including instream flow needs must come first. Precedence of licence must not be allowed to over-ride priorities of use. Just because someone had the foresight many years ago to obtain a water rights licence, that foresight does not justify an automatic transfer of that right with the transfer of the land. This does not create a level playing field as far as pricing lands of equal quality and may result in the continuation of a wasteful use of what is now a scarce resource in some areas of the province. At the time of transfer, there must be at least a compulsory review of that licence so that priorities of use and conservation issues can be addressed. In some cases, if the land is marginal to begin with, perhaps it is not the best use of a precious resource to award a licence. Runoff from lands subject to intensive fertilization and pesticide use should be a consideration in awarding a monitoring water rights licences. Since contamination of surface and ground waters becomes a societal problem and cost, perhaps elimination or at least minimization of contaminants in runoff should be a condition of the licensing review process. Certainly this must be a factor in allocation in areas of high susceptibility to ground water contamination. Management practices must reflect the special needs of these areas, although pollution prevention must be a priority for all activities that may affect water quality.

Public control vs private ownership of water rights - I am totally against privatization of water in Manitoba as it is a public resource that must remain in the public domain with the ability of government to make decisions on a broad scale on conservation, protection, sustainable use, and pricing. I am very concerned that Manitoba is already partly along the route to privatization with the trend to public/private partnerships. This must be stopped before it becomes acceptable practice. Privatization in Great Britain resulted in increased costs to the public for what is a public resource.

Water supply issues:

I recognize that there are demands for additional supplies in some of the southern agricultural areas, however the problems of wasteful uses must be addressed first, through monitoring and enforcement, as well as periodic reviews of existing licences, penalties for excessive use through pricing mechanisms, promotion of conservation, protection of remaining wetlands and reconstruction of wetlands, increasing the effectiveness of spring runoff retention. Vegetation around retention ponds could help intercept rainfall, protect water quality, and reduce evaporation. Mechanisms must be developed to account for municipal, domestic and smaller agricultural uses of surface and ground water so that the cumulative impacts of these uses can be assessed. The 25,000 l/day limit for domestic usage needs to be revised to reflect actual consumption and conservation needs. There should be a differentiation between purely domestic needs and agricultural needs. The huge allocations for irrigation must be reviewed for need and justification, and water meters and pricing must be instituted. Whether these huge allocations actually result in increased viability of rural communities or whether they just increase shareholder value to a huge industry should also be a factor. The issue of wells and possible contamination of ground water through open and abandoned wells needs to be addressed. Again, water pricing, education and awareness about, and incentives for, water conservation are required.

Water supply issues are further complicated by the fact that demand is greatest during periods when yields are at their lowest levels. With increasing industrialization of agriculture and dependency on single crops such as potatoes, where the purchasing agents are requiring that irrigation be in place, these demands are only going to increase. Manitoba Agriculture should be promoting diversification within individual operations so that survival under differing conditions is possible. If people choose to become dependent on irrigation, knowing that supplies will sometimes not be in tune with demands, then there should be no expectation of priority use or compensation in periods of drought or low flow. Inclusion of drought years must be part of their overall business plan.

Other issues:

The over-riding principles in any revision of *The Water Rights Act* must be the continuation of public ownership of this most valuable asset, maintenance of ecological processes and preservation of ecological integrity, the best interests of all Manitobans, present and future generations (not just the particular interests of any specific lobbying group), integration of water quantity, quality and ecological processes, and planning for protection and sustainable use through watershed (or some other scientifically defensible spatial unit) planning, which includes land use planning as well. The interconnectedness and interdependencies of all uses and users must be recognized. References to the need to include cumulative impacts and the precautionary principle when allocating surface and ground water must be part of a new act.

The present *Water Rights Act* has considerable Ministerial discretion which leaves the interpretation and implementation of the act subject to political pressures. This is not acceptable from a public perspective and does not provide certainty or a level playing field for applicants. Whether or not a public review of an application occurs should not be subject to ministerial discretion (Sections 6(3), 6(4)). There should be an automatic public review process for applications that are either above a certain threshold volume or where there are valid reasons for ecological, social, cultural or human health concerns.

A renewed act should also promote public consultation and involvement, education and awareness of protection and conservation needs for surface and ground water and easy public access to information about the health of this public asset.

Human and fiscal resources are needed, not just for monitoring, enforcement and reviewing licence applications, but also for collecting baseline water quality, quantity, variability and ecological information so that water use and reservation/protection decisions are made on a basis of sound scientific and traditional/local knowledge. Federal and provincial expertise, knowledge and funding must be shared for the common good of all Canadians. Best available technology should be encouraged for water users and for waste water treatment plants. Non-point sources of contamination such as run-off, air borne contaminants need to be minimized and addressed.

At the moment, conservation is primarily a reservation system for future use, rather that conservation as a societal and ecological necessity. The question of sustainability must be addressed: are present policies going to ensure that Manitobans will pass on to future generations at least as much total economic, social, environmental capital as this generation has enjoyed? Under present legislation, policies and lack of protection of water quality, quantity, and ecological processes, I do not believe this is so.

Once again, thanks for the workshop. It was quite useful to hear the different points of view.

ASSINIBOINE RIVER MANAGEMENT
ADVISORY BOARD
Box 70, 200 Saulteaux Crescent
Winnipeg, Manitoba R3J 3W3

Ian Dickson
Executive Secretary
Tel: 1-204-945-7950 Fax: 1-204-948-267

June 30, 1999

The Honourable J. Glen Cummings
Minister of Natural Resources
Room 333
450 Broadway Avenue
Winnipeg, Manitoba
R3C OV8

Dear Minister:

Some time ago you invited comments from the Assiniboine River Management Advisory Board concerning the Manitoba Water Rights Act. While review of the provincial legislation is not the focus of its overall mandate, the Board has, nevertheless, become familiar with many water management issues that fall at least in part within the purview of the Act.

Although its members have no particular expertise in this area, the Board has gained some understanding of provincial water legislation from its Assiniboine River Basin perspective. Most notable, in this regard, is the recognition that today's water legislation was not crafted to meet the sustainable development, environmental protection, partnership and user needs and demands of the future. As well, revised and updated legislation must play a major role in sustainable water use for Manitobans into the next century.

The Board welcomes the opportunity to comment on the Manitoba Water Rights Act. The following observations are based on the results of public discussion entertained by the Board during the past five years and from the personal views and opinions offered by its individual members.

SUSTAINABLE DEVELOPMENT: Water Policies and Objectives.

From the onset, the Board's work has been governed by the objectives of the provincial report titled "Sustainable Development - Applying Manitoba Water Polices". These policies and objectives have provided a policy context for the work of the Board. In the Board's view, therefore, provincial legislation should reinforce and complement the following:

- Consultation and information as a basis for building consensus among stakeholders
- Consideration of ecosystem needs, capabilities and constraints
- Water supply capability of watershed systems
- Security of water supply systems for individual needs and community services (a priority concern)
- Fitting economic development objectives within the sustainability of the environment (sustainable planning before economic development)
- Consideration of demand management systems (economic and market considerations) for water conservation and allocation (with emphasis on those watersheds already in short supply)
- Provision of adequate monitoring and enforcement of licenses and regulations

The above appear to be at the forefront of public concern when addressing Manitoba's future water management needs. Any review of the Act should ensure that the legislative framework for the management of water addresses these concerns.

WATERSHED PLANNING: Its Relationship to Subwatersheds, Conservation Districts and Local Advisory Boards.

In addition to ensuring that sustainable development guidelines and objectives shape the future of Manitoba Water Rights legislation, the Act should clearly indicate a preference for water planning on the basis of provincial watersheds. Planning for sustained use of water requires a framework to consider and combine the social, economic and environmental needs of people. The Board has found watershed boundaries are accepted by many as a preferred water management framework. Hydrologists favour the use of watersheds for water management purposes. The ultimate challenge is, therefore, to ensure that social, economic and environmental considerations are incorporated into decisions respecting the long-term use, management and protection of water.

Through its work the Board has found acceptance and support for the use of watersheds and subwatersheds as preferred water management systems. Each watershed and smaller subwatersheds have their own unique mixture of people and preferences. Watershed plans need to be developed, therefore, to reflect these regional and local values and preferences; to identify resource capabilities and opportunities; and, to recognize development options and cost/benefit scenarios. Such plans need to be developed in consultation with all stakeholders. Each plan needs to consider the following:

- Reservations for minimum instream flows to sustain ecosystem requirements
- Water reserves to provide for long term individual and community needs.
- Balancing water conservation and water supply practises with drainage works to maintain the hydrologic balance in the watershed
- The introduction of demand management practises (water marketing and pricing) to assist in rationalizing, regulating and limiting water allocations
- The designation of lands for the conservation and protection of water - e.g., woodlands, potholes, grasslands, riparian vegetation, etc. to conserve water and assist in protecting its quality

A formal system for establishing watershed authorities and/or advisory boards which would provide an organizational framework to formalize and facilitate stakeholder participation in watershed planning. They are the fundamental building blocks for long term sustainable development planning and implementation. The authorities/board would provide a regional or watershed planning umbrella to assist the very promising results of conservation districts as a planning and program implementing authority for subwatershed water management. Such a planning framework would also serve to coordinate and integrate planning at a more local level. The establishment of local advisory boards such as local aquifer management boards, reservoir management committees, etc., to deal with special landscape planning needs and water management issues would become part of this broader watershed planning framework. The Act should outline processes and procedures for the establishment of watershed boards and local authorities.

THE MANITOBA WATER RIGHTS ACT

The Board has limited familiarity with formal water planning procedures and the creation of water rights legislation. Its work, however, has lead the Board to believe that a different approach to water management is required in the future. New water management legislation must be founded upon and driven by sustainable development principles. *The Manitoba Water Rights Act* was never crafted nor revised with sustainable development as its focus. To the contrary as reported by the Clean Environment Commission, the Act and recently approved Provincial Water Policies present difficulties when attempting to reconcile these two policy instruments. The Commission noted that clarification and updating of water legislation is needed.

Based on the foregoing, the Board would recommend that the following matters be given attention in any review of *The Manitoba Water Rights Act.*

1. Sustainable Development - Water Policies and Objectives

- The policies and objectives of Manitoba's water policy document and related sustainable development guidelines should be embodied as the focus of new Manitoba Water Rights legislation and any regulations developed as a result of a new Act.

2. Watershed Planning and Water Management Authorities

- Watersheds, subwatersheds and local landscape management needs should provide the boundaries and basis for a hierarchy of water planning. The Act should provide the necessary authority and direction to establish formally structured watershed Boards. Such broad-based watershed authorities would lead and coordinate the development of watershed management plans and their implementation. They would integrate and coordinate the work of others at a sub-watershed and local level, (e.g., conservation districts, aquifer advisory boards, etc.). The Act should provide guidance in the structuring of formally designated watershed plans. The minister should formally adopt and approve such plans.

3. Minimum In Stream Flows

- Any regulations established under the Act should specify minimum instream flow requirements as part of the watershed plan.

4. Water Reserves

- Planning for water reserves should be incorporated as part of approved watershed management plans to meet long-term individual and community water requirements.

5. Water Demand Management Practises

- Economic techniques and water pricing considerations should be considered in any review of the Act as a mechanism by which to rationalize the use and allocation of water.

6. Crown Land Designation for Watershed Protection

- Provision should be made for the designation of specific crown lands particularly suited to water conservation and water quality enforcement. Such lands would received formal recognition as part of approved watershed plans.

7. Water Monitoring and Regulation

- The Act should require that adequate water monitoring, regulation and enforcement systems be maintained. Particular attention should be given to licensing procedures and the enforcement of license and permit provisions.

8. Other Issues

More specific issues identified by the Board as part of a review of the Act include the following:

- The need to address cumulative impacts as part of water allocation and development initiatives
- To determine the feasibility for water export within the constraints of economic development and environmental protection
- The need to provide for co-management agreements as part of water allocation practises and procedures
- To explore conservation practises, public awareness and environmental education as integral components of any new legislation

SUMMARY

In the conduct of its work, it is not unusual for the Board to stray beyond its Assiniboine River basin mandate. Basin water management requirements are often closely linked to broader provincial water management considerations. There is a tendency, therefore, when examining water rights legislation for the Board to go beyond what would normally be embraced by the provincial Act. The Board is probably guilty of such an overture in this instance, and our comments may reflect broader water management implications than otherwise intended as part of any legislative review. Nevertheless, if we are to develop a new approach to water management in the future other factors not solely governed by the Manitoba *Water Rights Act* must also be considered.

In this regard water quality is a very important water management component, yet, it is dealt with under different legislation. Future watershed plans should require that water quality objectives, standards, monitoring and accountability are an integral part of sustainable development. The linkage between land use, water supply and water quality in watershed planning under existing legislation is not clear.

As well, as part of any such new initiative, the Board has identified the need for a new authority to manage water on a sustainable development basis. The Board's position in this regard coincides with recent recommendations by the Manitoba Water Commission.

The importance of partnerships, consensus building, public participation, education and public awareness are of equal concern in examining Manitoban's future water management requirements. Yet the ability to address these issues goes well beyond provisions of water rights legislation.

The Board has on earlier occasion recommended the Department undertake a broad-based and a comprehensive review of the Act to determine its suitability for future management of water in Manitoba. This together with the maintenance of healthy river systems and a new watershed approach to planning and implementing water management program, will constitute the cornerstone for enhanced water management practises for the future.

We appreciate the opportunity to share our views on the Manitoba Water Rights Act. We welcome each and every opportunity to bring the findings of the Board to your attention and for the consideration of others. We hope these comments will be helpful.

Yours truly,

I. W. Dickson

I. W. Dickson
Executive Secretary

MANITOBA *WATER RIGHTS ACT* BACKGROUND DOCUMENT

MANITOBA *WATER RIGHTS ACT*

WATER USE AND ALLOCATION

WORKSHOP

December 7, 1998

WATER USE LICENSING

Ray Bodnaruk, P. Eng., Manager, Water Licensing
Manitoba Natural resources - Water Resources Branch
Box 16, 200 Saulteaux Crescent, Winnipeg MB R3J 3W3

Tel: (204) 945-6488
Fax (2040 945-7419
Email: rbodnaruk@nr.gov.mb.ca

The Manitoba *Water Rights Act*

Water Use and Allocation

A. HISTORICAL PERSPECTIVE - MANITOBA *WATER RIGHTS ACT*

The current *Water Rights Act* was proclaimed in 1988. The current Act was preceded by three earlier acts, the first passed in 1930, followed by those passed in 1954 and 1972.

In each case, the acts that succeeded the first Act were essentially amendments to the act being replaced.

The current *Water Rights Act* was written at a time which shortly preceded a period of some fairly significant changes in societal values concerning economic development and environmental protection, both globally and locally. The most relevant and notable expression of these emerging values locally are the Manitoba Sustainable Development Strategy, the Land and Water Strategy, the Manitoba Water Policies, various other component strategies of the Sustainable Development Strategy, and new acts such as *The Environment Act* - all of which have influenced how the present *Water Rights Act* is administered.

B. *WATER RIGHTS ACT* ADMINISTERED BY MANITOBA WATER RESOURCES

The legal instrument used to regulate water use in the Province of Manitoba is *The Water Rights Act*.

The Water Rights Act is administered by the Manitoba Water Resources Branch. Administration of the Act comprises two separate program areas - water use licensing and water diversion licensing. The water use licensing program is administered by the Water Licensing Section. One of the sections major roles is "to ensure the optimum development and use of the province's water supplies while sustaining the resource base and maintaining environmental quality."

The Water Licensing sections objectives and activities in respect to Water Use Licensing are supported by the three other major program areas operating within the Water Resources Branch, the Groundwater Management Section, the Surface Water Management Section and the Water Planning and Development Section.

The following paragraphs describe the main provisions of *The Water Rights Act* as applied to water use licensing, the fundamental areas of attention in processing water use licences, and the general contents of a water rights license for water use.

C. MAIN PROVISIONS OF *THE WATER RIGHTS ACT* (WATER USE LICENSING)

- **Crown owns all rights to water (Section 2)**

  All property in, and all rights to the use or diversion of all water in the province are vested in the Crown in the right of Manitoba.

- **Prohibition against use or diversion of water without a licence (Section 3)**

  No person shall use or divert water without a valid and subsisting licence, except for:

  - a person who uses water for domestic purposes,
  - person who constructs a well to obtain water for domestic purposes,
  - a person exercising a right under any other Act of the Legislature or any Act of the Parliament of Canada.

  "**Domestic purposes**" is defined as the use of water from a source other than a municipal or community water distribution system at a rate of not more than 25,000 litres per day (5,500 gallons per day), for household and sanitary purposes, for watering lawns and gardens, and for watering livestock and poultry.

  (25,000 litres is approximately 5500 Imperial gallons, which is about 8 minutes of water supplied by a quarter section irrigation pivot pump using typical irrigation pumping rates).

- **Minister may issue a licence (Section 5.1)**

  Water use licenses are issued by the Director of the Water Resources Branch on behalf of the Minister. (Licences, permits, or letters of authorization, in all cases signed by the Director of Water Resources, are the only forms of authorization to divert and use water).

  A water use license provides a right to use water; it does not guarantee water availability in the amounts and the times required.

- **License terms and conditions (Section 5.2)**

  In addition to authorizing the use and diversion of water (and the construction, operation, and maintenance of works for the use and diversion of water), licences contain a number of terms and conditions which the authorization is subject to. The terms and conditions are as prescribed in the regulations or as may be required by the minister.

- **Precedence of licences ... first in time, first in right (Section 8.1)**

  Licences have precedence in relation to one another according to the date of submission of the application for each licence. Precedence, which applies once a licence has been issued, establishes the licensee's right to use water from a source without interference relative to other junior licensed users of water from that same source (seniority rights).

  A licence that is renewed in accordance with the regulations retains its original precedence.

- **Priorities of use (Section 9)**

  The order of priority for which water may be used or diverted is:

  1. domestic
  2. municipal
  3. agricultural
  4. industrial
  5. irrigation
  6. other

  Priorities of use apply:
  - when two applications are received on the same day, higher priority use then has precedence, assuming both licenses are issued.
  - in a fully allocated situation, a new license could be issued displacing an existing licence for a lower priority use, subject to compensation by the new licensee.
  - in reserving water from a source for future high priority uses.

- **Precedence vs. Priorities**

  Priorities of use do not override first in time first in right principle.

- **Change of land ownership (Section 11)**

  Where interest in land associated with a licence is transferred, the licence expires unless the new owner requests a transfer of the licence. A transferred licence retains its precedence as well as other conditions such as volume and rate of withdrawal from source, etc.

- **Reservation of water (Section 13.1)**

  Water in a source may be held in reserve by the province for the purposes of:
  - undertaking an assessment to determine the best use of the water from that source
  - retaining the water for the best or most important future use (high priority - domestic or municipal).

- **Suspension, cancellation, or amendment of license circumstances:**
  - failing to use or divert the water as licensed
  - construction of unsafe works
  - failure to comply with the licence terms and conditions

D. PROCESSING WATER USE LICENCES UNDER *THE WATER RIGHTS ACT*

Four fundamental objectives are considered in the review of water use licence applications and in the terms and conditions that are included in a licence.

1. **Affirming rights and responsibilities of a potential licensee** to take water from a given source relative to that of other existing licensees and domestic users.
2. **Establishing the legitimacy and integrity of the proposed water use** in terms of the purpose of use, the volume and the rate of withdrawal, and the physical and legal ability to access and withdraw the water, to convey it to the location of use, and to use it at that location.
3. **Managing the water resource** in terms of limiting allocations to protect the sustainability of the water source and to protect instream requirements.
4. **Minimizing or avoiding adverse impacts** of the withdrawals of water, or the use or disposal of water, as they may affect other interests.

E. CONTENTS OF A WATER RIGHTS LICENCE FOR WATER USE

Licences for water use usually describe the following:

- the use to be made of the water
- source and location of withdrawal
- location of water use
- limit to volume of water that may be used annually
- limit to the rate of withdrawal
- a requirement that water use records must be kept and submitted annually
- various terms and conditions
- the length of time to expiry of the licence
- for withdrawals from streamflow: a lower limit of streamflow below which withdrawal of water must stop (intended to account for instream needs, domestic use, senior licensee needs, and other possible requirements)
- for withdrawals from a waterbody: a failsafe lower limit of a reservoir elevation at which withdrawal of water from a public reservoir must stop

A water rights licence by itself does not give total authorization to construct a water development project. Other regulatory approvals or permits may be required as well, including an Environment Act Licence. Where an Environment Act Licence is required, the two licensing processes are closely coordinated.

F. GUIDING PRINCIPLES OF *THE WATER RIGHTS ACT*

- **The Act is more permissive than prescriptive**

  The Water Rights Act provides considerable discretion to the minister, or the director on behalf of the minister. Many sections and subsections of the Act describe what the minister **may** do, not what the minister will do. What the minister in fact will do is guided by policies and administrative rules developed in recognition of the Act's over-riding principle, that being **"what is in the best interests of the residents of Manitoba"**

  In respect to water use and diversion, "What is in the best interests of the residents of Manitoba" changes over time to reflect evolving social, economic, and environmental values. The Sustainable Development Principles and Guidelines and the Manitoba Water Policies have established some new benchmarks and new directions in this regard. More specific guidance is provided by integrated resource management plans prepared with stakeholder input and using a consensus process.

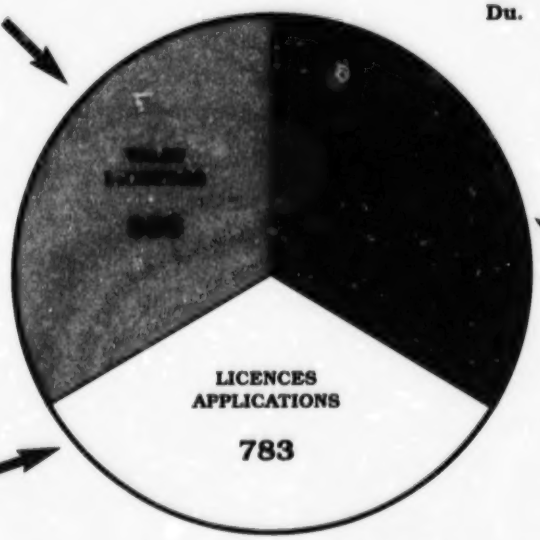
  Policies, administrative rules, and licence terms and conditions change as necessary to support evolving societal values and needs. The policies and administrative rules are nevertheless applied fairly and consistent with the overall intent of the Act to ensure the integrity of the water rights licensing process.

WATER USE AND ALLOCATION
LICENCES & APPLICATIONS

December 1998

Do.	15
Mu.	97
Ag.	73
In.	45
Ir.	453
O.	44
Du.	142
	869

Do.	Domestic
Mu.	Municipal
Ag.	Agricultural
In.	Industrial
Ir.	Irrigation
O.	Other
Du.	Ducks Unlimited



Do.	25
Mu.	140
Ag.	77
In.	28
Ir.	466
O.	45
Du.	2
	783

Do.	89
Mu.	63
Ag.	15
In.	60
Ir.	460
O.	53
Du.	96
	836

Total Projects (Licences + Applic.) = 2488
Total Licences (Valid + Expired) = 1705
Total Backlog (Expired + Applic.) = 1619

WATER USE LICENSING ISSUES

CONCERNS/SOLUTIONS?

THE ACT

- some legitimate
- changes needed

CURRENT PROGRAMS?

- licencing backlog
- enforcement
- policies, procedures
- perceptions

WATER USE LICENSING ISSUES

ACT IS NOT CURRENT

- not written for today
- limiting
- much scope for change

WATER USE CATEGORIES

- instream flows
- commercial use
- conservation use

PRECEDENCE: PRIORITIES/SENIORITY

- clarification, strengthening
- new and emerging values
- existing rights; future?

WATER USE LICENSING ISSUES

REGULATORY SCOPE

- **unrealistic expectations**
- **other jurisdiction needed**
  - private land use
  - wetlands, habitat
  - non-water issues

WATER USE INFORMATION

- **provided for**
  - Act, and licences
- **enforcement deficient**
- **critical management tool**
- **current commitment**
- **strategy underway**

WATER USE LICENSING ISSUES

LICENCE FEES, USER CHARGES

- **provided for in Act**
- **limited implementation**
- **arguments for:**
  - water conservation
  - infrastructure costs
  - management costs
  - rational decision-making
- **fee structure factors:**
  - licensed amounts, usage
  - resource impacts
  - consistent, or variable?
- **realities**
  - special circumstances
  - political

WATER USE LICENSING ISSUES

RESOURCE USE EFFICIENCY

- **Act's provisions**
  - use it or lose it
  - licence transfer by Minister
- **increasing importance**
  - supply limitations
  - best "economic" use of water
  - future needs
- **marketable rights?**
  - market principles
  - speculation?
  - windfall?
  - loss of control?
  - abrogating responsibility?
  - people's vs. private?
- **alternatives**
  - pricing?

WATER USE LICENSING ISSUES

CUMULATIVE IMPACTS

- **no provisions in Act**
- **addressed by other means**
  - water allocation planning
  - management plans
  - management costs
  - environmental licensing
- **concerns legitimate**

WATER EXPORT

- **no provisions in Act**
- **policies needed**
  - provincial
  - national
- **factors**
  - trade
  - competition

WATER USE LICENSING ISSUES

CO-MANAGEMENT ARRANGEMENTS

- **no provisions in Act**
- **opportunities?**
  - irrigation associations
  - mandated existence
  - empowerment & accountability
  - problem solving by client group
  - clear rules, responsibilities
  - supported by fees?
- **public sanction needed**
  - management plans

WATER USE LICENSING ISSUES

WATER MANAGEMENT PLANS

- **no provisions in Act**
- **strongly supported**
  - integrated management
  - water allocation planning
  - cumulative impacts attention
  - community input
  - co-management basis
  - watershed based
- **current deficiencies**
  - responsibility/jurisdiction
  - decisions, implementation
  - business boundaries
- **new Act to address**